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10/577,039	04/24/2006	Anders Delen	1027651-000515	2309
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EXAMINER GERRITY, STEPHEN FRANCIS				
ART UNIT		PAPER NUMBER		
3721				
NOTIFICATION DATE		DELIVERY MODE		
03/24/2009		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

# Office Action Summary

## Application No.

10/577,039

## Applicant(s)

DELEN ET AL.

## Examiner

Stephen F. Gerrity

## Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9-11 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 9-11, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 13-16 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

#### **Election/Restrictions**

1. It is noted that non-elected claims 7, 8 and 12 have been canceled.
2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### **Drawings**

3. The replacement drawings were received on 20 November 2008. The replacement drawings are acceptable.

#### **Specification**

4. The abstract of the disclosure is objected to because of the use of legal phraseology, i.e. "said" (line 9). Correction is required. See MPEP § 608.01(b).

#### **Claim Objections**

5. Claim 18 is objected to because in line 1, "lest" should be changed to --least--. Appropriate correction is required.

#### **Claim Rejections - 35 USC § 102**

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4-6, 9-11, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US 2,751,965).

Regarding claim 1, the Miller reference discloses a sealing apparatus including a sealing unit 71 and an abutment 70. The abutment 70 is connected to at least one elongate element 21 which extends in a direction from the abutment 70 towards and past the sealing unit 71. The at least one elongate element 21, beyond the sealing unit 71 is disposed to be connected to at least one first operating element 24. An operating unit 36 is disposed to apply a force between the sealing unit 71 and the first operating element 21 so that the sealing unit 71 and the first operating element 21 are displaced in a direction from one another and so that the abutment 70 and the sealing unit 71 are displaced in a direction towards one another. The force from the operating unit 36 is applied to the sealing unit 71 by the intermediary of a second operating element 20 comprising at least one force-restricting coupling member 124 which is disposed to restrict force between the second operating element 20 and the sealing unit 71 and thereby force between the abutment 70 and the sealing unit 71.

Regarding claim 4, the Miller reference teaches that the operating unit 36 comprises an interconnection member 38 displaceably substantially transversely of a direction of movement of the sealing unit 71 and the abutment 70. The interconnection member 38 being connected to the sealing unit 71 by the intermediary of a first linkage 28 which is pivotally connected to the interconnection member 38 and the intermediary of first and second components 32 of the second operating element 20 which is not connected to the sealing unit 71 and which is connected to the first operating element

21 by the intermediary of a second linkage 29 which is pivotally connected to the interconnection member 38 and the second operating element 20.

Regarding claims 5 and 17, the Miller reference discloses that the second operating element 20 is slidably connected to the at least one elongate element 21.

Regarding claim 6, the Miller apparatus is fully capable of performing the functional recitations set forth in the claim.

Regarding claim 9, the Miller reference discloses all of the structural limitations in the claim including that the force-restricting coupling member is pressurized by a fluid (the operating unit 36 is pressurized by air which is a fluid), and the Miller apparatus is fully capable of performing all of the functional recitations set forth in the claim.

Regarding claims 10 and 11, the functional recitations concerning the speed of movement and the transverse movement of the package and speed thereof relative to the movement speed of the abutment and sealing unit of claims 10 and 11 are considered to be fully capable of being performed by the Miller apparatus.

Regarding claim 19, the Miller reference teaches that the force restricting coupling 124 is configured to restrict a pushing force of the sealing unit.

#### **Allowable Subject Matter**

8. Claims 2, 3, 13-16 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### **Response to Arguments**

9. Applicant's arguments filed 20 November 2008 have been fully considered but they are not persuasive.

In response to Applicant's argument that the Miller reference does not anticipate the rejected claims (as set forth in the previous Office action), the law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claim(s) under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. Kalman v. Kimberly-Clark Corp., 218 USPQ 781. Anticipation under 35 USC 102 is established when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, Inc., 221 USPQ 385. Additionally, during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP § 2111.01. Accordingly, the

examiner has applied the broadest reasonable interpretation to the claims (as rejected) and finds that the claimed subject matter fails to structurally distinguish from the Miller reference. Finally, it is pointed out that claim 9, when given its broadest reasonable interpretation, does not require that the force restricting coupling be comprised of a structure which is pressurized by fluid. Claim 9 only requires that it be pressurized (effected by a force of pressure) by a fluid. Clearly, the element 124 is effected by the fluid which pressurizes the element 36.

### **Conclusion**

**10. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**11.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen F. Gerrity/  
Primary Examiner, Art Unit 3721

16 March 2009